



South Africa and the Singapore Convention

Mr. John Brand

Date: 15 April 2020 **Time:** 1:00pm CEST

Presentation Summary:

Mr. John Brand (Director of Conflict Dynamics, IMI Certified Mediator, and SIMI Certified Mediator) gave an interesting presentation on the topic ‘South Africa and the Singapore Convention’. Mr. Brand started his presentation with a brief overview of the purpose of the Singapore Convention on Mediation¹ (SCM). He stated that it was to address the lack of certainty as to whether mediation settlement agreements are enforceable in different countries. He added that the courts of Signatory States are mandated to enforce settlement agreements so long as the mediation settlement agreement complied with the conditions set out in the SCM.

Mr. Brand opined that the SCM aims to elevate the status of cross-border mediation in a similar manner to what the New York Convention² had achieved for arbitration. He believed that the SCM may enhance international trade and commerce as commercial parties would be able to access and reap the benefits of a flexible, cheaper, and faster method of dispute resolution for their transnational disputes, when compared to arbitration and litigation.

Next, Mr. Brand shared his views on how South Africa would benefit from the SCM. He opined that the ratification of SCM by South Africa would be an indication to the world that the government places significant importance to mediation as a distinct dispute resolution

¹ Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

mechanism. Thus, the country would attract much needed foreign trade and investment parties who would then be able to benefit from mediation in their transnational disputes.

Mr. Brand opined that South Africa would have little difficulty in complying with standards set out in the SCM if and when it chooses to ratify it. He went on to consider the enormous efforts that South Africa has undertaken to ensure proper standards for mediation service providers, ethics, training and accreditation for professional mediators. The South African Law Commission's ADR Advisory Committee is currently holding discussions with the government to crystalize these standards in domestic legislation. He surmised that South Africa has a large pool of internationally trained and accredited mediators, and added that the country also has a well-developed voluntary arbitration system. The [International Arbitration Act 15 of 2017 \(the IAA\)](#) has incorporated the [UNCITRAL Model Law](#)³ with its domestic laws. This has allowed cross-border arbitration in South Africa to be regulated. As such, South Africa mediation and arbitration practice is consistent with modern international best practices, and the country is ready to handle international and transnational disputes.

Mr. Brand opined that the first step that South Africa needs to take would be for its government to sign and ratify the SCM. He fears that inaction would send a negative signal to foreign trade investors. He is, however, hopeful that the South African government will realize this soon and sign the SCM. Mr. Brand opined that South Africa's approach to the protection of investor rights would greatly affect foreign trade and investment. He considered being a Signatory country to the SCM to be an edge over countries offering similar protection to foreign investor rights and that more could be done by the South African government.

He concluded by reflecting that though mediation in South Africa is developed enough to take advantage of the SCM, without formal action to ratify the SCM and domestic reforms to protect investor rights, South Africa is likely to lose much-needed foreign trade investment to Signatory countries of the SCM.

Q&A Discussion

³ UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018.

Some questions addressed by Mr. Brand during the session are as follows:

- What, if any, policy factors can inhibit South Africa from signing and ratifying the Convention?
- What role can mediation play in Africa as a continent?
- Which interest groups can influence the South African government to sign and ratify the SCM?
- Would the settlement agreement of an international dispute from a private mediation in Singapore (a Signatory country) be enforceable in South Africa (a non-Signatory country)?
- How will foreign direct investment be affected as a result of investor state dispute settlement reforms in South Africa?
- What are the impacts of SCM on the role of South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)?
- How will the amendments to Rule 41A of the Uniform Rules of Court contribute to the growth of mediation?⁴
- How can lawyers in South Africa influence investors to use mediation for their disputes?

We invite you to listen to Mr. Brand's answers from the [video record](#) of the session, as well as to catch up on his response to other questions not listed above.

Links to additional resources on topics that came up during the session are provided below:

- Obtaining formal accreditation by a standards body for individual mediators:⁵
 - [International Mediation Institute \(IMI\) Certified Mediator](#)
 - [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)
- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the 'Singapore Convention on Mediation'

⁴ Uniform Rule 41A: Mediation as a Dispute Resolution came into force On 9 March 2020. A copy is available here <<https://www.conflictdynamics.co.za/DBFile/Files/db58b4ce-7ee0-4020-8531-1e4933480987/download>>.

⁵ There is cross recognition offered between IMI's Certified Mediators and SIMI's Certified Mediators. Individual mediators accredited on other levels by IMI or SIMI do not qualify for cross recognition by virtue of having not met the minimum required experience.

- [International Arbitration Act 15 of 2017 \(the IAA\)](#)
- [UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation](#)
- South Africa High Court [Uniform Rule 41A: Mediation as a Dispute Resolution](#)

The team at SIMI and IMI would like to express our gratitude to Mr. Brand for sharing his time to be a speaker at the Singapore Convention Seminar Series, and to participants for joining us live for the session. Do join us for our next seminar on '*The potential of the Singapore Convention in Malaysia*'!